

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.6177 of 1998

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For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

THAKOR BHALAJI LAXMANJI

Versus

GOVERNMENT OF INDIA

Appearance:

MR RC PATHAK for Petitioner
MR YN RAVANI for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/11/98

ORAL JUDGEMENT :

Rule.

2. Heard the learned counsel for the parties. By way of this Special Civil Application, the petitioner seeks direction against respondent no.1, namely, Secretary to the Govt. of India, Ministry of Labour, New Delhi, to refer the dispute, Annexure 'A' to the

petition, for adjudication to appropriate Industrial Tribunal.

3. The say of the petitioner is that he was working under the direct control of respondent no.2, Regional General Manager, Telephone Communication Department, Mehsana since 2.9.1987. The service of the petitioner came to be terminated after completion three and half years of service in violation of statutory provisions. Respondent no.1 vide communication dated 1.3.1998 informed that reference cannot be made as it is found that the workman did not put in 240 days of service in any calendar year prior to his alleged termination so as to get protection under Industrial Disputes Act, 1948 ("the Act" for brevity).

4. It is contended by the learned counsel that it was not open for respondent no.1 to enter into the disputed questions of fact. He says that there is a *prima facie* case and evidence to show that the petitioner had worked for more than 240 days. On the other hand, Shri Ravani, learned advocate invited my attention to the reply filed by Shri G.N. Patel, SDOP, Kalol. Certain details have been shown in para 13 of the said reply indicating that the petitioner has not worked for 240 days. This has been seriously disputed by the petitioner. The petitioner says that he had worked for more than three and half years.

5. I have considered the rival contentions. There appears to be serious dispute as to whether the petitioner has worked for 240 days. It is, of course, true that appropriate Government can see whether there is any *prima facie* case or not, but it cannot enter into disputed question of fact. Since there is serious dispute whether the petitioner served for 240 days, the appropriate Government, respondent no.1 ought to have made reference.

6. In view of the aforesaid, this Special Civil Application is allowed and order dated 1.3.1998, Annexure 'C' is quashed and set aside. Respondent no.1 is directed to make a reference under sec.10 of the Act and in accordance with law, within the period of two months from the date of receipt of writ of this judgment. Rule is made absolute to the aforesaid extent. No order as to costs.

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